



ADMINISTRATION AND  
MANAGEMENT

OFFICE OF THE SECRETARY OF DEFENSE

1950 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1950

DEC 19 2011

MEMORANDUM FOR ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE  
ARMY

SUBJECT: Inland Waterways Users Board – Request for Representative Member Designation

This is in response to the U.S. Army Corps of Engineers' request to designate the members of the Inland Waterways Users Board (herein after referred to as the "Board") as representative members instead of special government employees.

The Department has a long standing agreement with the Defense congressional oversight committees that the Department will refrain from using representative members on federal advisory committees established or supported by the Department of Defense. This is essentially codified in Department of Defense Instruction, 5105.04, dated August 6, 2007, entitled "Department of Defense Federal Advisory Committee Management Program."

Determining a member's designation status is an agency-level determination, which must be made by this office prior to the Secretary of Defense inviting or approving the appointment of the individual(s) in question. Such determinations must be made when the advisory committee is initially established, reaffirmed when its charter is renewed, and communicated to prospective members prior to them doing any committee work.

Deviations from the Department's agreement with the Defense congressional oversight committees about the use of representative members are rare, and may only be approved by this office after consultation with the Department of Defense Office of General Counsel (DoD OGC); this was reaffirmed by Secretary of Defense Robert Gates on June 28, 2011.

Please note that when it comes to representative members, the Secretary of Defense's approval authority is different: the Department of the Army identifies the organizations or interested groups; the Secretary of Defense approves and invites them to participate; and the organizations or interested groups select the individual they want to represent them. The Department may stipulate that the individual(s) be eligible to obtain a security clearance if required for the committee's work. In addition, we may ask the interested groups to comply with the President's policy prohibiting registered federal lobbyists.

After consulting with DoD OGC, I hereby grant a waiver to the policy against representative members under DoDI 5105.04, and affirm that the Board's membership will be comprised of representative members. In conjunction with this decision, I hereby direct the following:

1. The Advisory Committee Management Officer's (ACMO) office, in consultation with your office, will work with the General Services Administration to file an amended charter reflecting this decision.


2. The Department of the Army, within 90 days from the date of this memorandum, will provide the ACMO's office with the following information:

- a. Identify who the primary users and shippers are who use the inland and intracoastal waterways for commercial purposes;
- b. Develop a rotational method for ensuring a balanced representation among the members, to include representatives from various regions of the country; and
- c. Identify the terms of service to be served by the representative members.

To avoid any further and unnecessary disruptions, the Department of the Army is authorized, on a temporary basis, to use the individuals it currently has identified for potential Board members as the interested groups nominees for representative members. However, the Department of the Army must identify which nominee represents what organizations or interested group and provide this information to the ACMO's office within 10 days. In turn, the ACMO, in consultation with your office, will develop the necessary decision documents for the Secretary of Defense's consideration.

Following the Secretary of Defense's approval of the interim listing of designated organizations or interested groups, the ACMO's office, using the documentation requested above, subsequently will work with your staff to develop the appropriate decision documents for the Secretary of Defense to approve inviting the permanent list of designated organizations or interested groups, along with the recommended rotational scheme. Once the Secretary of Defense approves the permanent list of designated organizations or interested groups, the Department of the Army will have one-year to phase in the permanent list of designated organizations or interested groups using the approved rotational scheme. During the transition period, any organization or interested group that happens to be on both the temporary and permanent list may retain its incumbent representative if they so desire.

If you have any questions about the Department's Federal Advisory Committee Management Program, this action for the approval of representative members, or any subsequent actions that have to be taken by the Secretary of Defense, please contact the ACMO's office at 703-692-5952.

  
Michael L. Rhodes  
Director

cc:  
Deputy General Counsel (Legal Counsel)